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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE JUSTICE SHRI SATISH K. AGNIHOTRI

WRIT PETITION (S) No. 2326 of 2007

PETITIONER : SAKHA RAM KUNJAM AGED -43 YEARS, S/O SHRI SONAU RAM KUNJAM POSTED AS – ASSTT. PROFESSOR, AT – GOVT. COLLEGE, NARAYANPUR, DISTRICT – BASTER (C.G.)

VERSUS

RESPONDENTS : 1. STATE OF CHHATTISGARH, THROUGH – THE SECRETARY, DEPARTMENT OF HIGHER EDUCATION, MANTRALAYA, D.K.S. BHAWAN, RAIPUR.

2. KAMLESH KUMAR MARKAM, ASSISTANT PROFESSOR, AT – GOVT. COLLEGE, CHARAMA DISTRICT – BASTER (C.G.)

WRIT PETITION U/A - 226 OF CONSTITUTION OF INDIA.

Present: Shri R.K.Kesharwani, Advocate for the petitioner.
Shri Ajay Dwivedi, Panel Lawyer for the State / respondent no.1.

ORDER
(Passed on 16th day of April, 2007)

1. By this petition, the petitioner challenges the legality and validity of the order dated 25.01.2007 (Annexure P/7) passed by the Avar Sachiv, Government of Chhattisgarh, Higher Education Department, Raipur.

2. The facts, in nutshell is that he was appointed with respondent no. 2 on the post of Assistant Professor on 23rd December, 1989. The respondent no. 2 was regularised with effect from 24.12.1998 whereas the petitioner has been regularised with effect from

18.01.2006. The petitioner and respondent no. 2 were appointed on the same day. The petitioner was not regularised in the year 1998 when respondent no. 2 was regularised. Thus a discriminatory treatment has been meted out to the petitioner and for that the petitioner has made a representation (Annexure P/6) to the Commissioner, Higher Education, but nothing has been done so far.

3. Being aggrieved, the petitioner filed W.P. No. 2593 of 2006 (Sakha Ram Kunjam Vs. State of Chhattisgarh & another) in this Court. This Court, vide order dated 20.06.2006 granted permission to the petitioner to make a detailed representation to the Secretary, Higher Education Department, Mantralaya, Raipur for deciding the same within a period of four months from the date of receipt of the representation. The State Government, vide impugned order dated 25.01.2007, dismissed the representation on the ground that the other colleague namely Kamlesh Kumar Markam was regularised on 24.12.1998 by the then State of M.P. before creation of the State of Chhattisgarh. The petitioner has not taken any step till 18.01.2006 when the petitioner alongwith 103 persons were regularised. Prayer for regularisation with effect from 24.12.1998 cannot be granted at this stage.

4. Shri R.K.Kesharwani, learned counsel appearing for the petitioner submits that there is discrimination between the petitioner and other similarly situated co-employee Shri Kamlesh Kumar Markam. There is no other ground raised by the petitioner except that other co-employee who was similarly situated was granted regularisation with effect from 24.12.1998.

5. The admitted fact is that the petitioner alongwith others were appointed on emergency basis vide order dated 23.12.1989 (Annexure P/1). The appointment of the petitioner was not in accordance with law and contrary to the constitutional scheme of

the employment. The appointment was not due to proper selection after inviting all eligible candidates to participate in the open competition. The initial appointment of the petitioner itself was not in accordance with law, thus, the petitioner has not acquired any right. It is trite that if the appointment itself is bad, the employee cannot claim regularisation on the basis of the said appointment.

6. Looking from all the angles, the other employee was regularised on 24.12.1998 the petitioner has not taken any step till the State of Chhattisgarh regularised the services of the petitioner alongwith 103 other employees on 18.01.2006.

7. Looking from all angles, there is no merit in this petition. Thus, this petition deserves to be and is dismissed accordingly.

Sd/-
Satish K. Agnihotri
Judge

Amit